IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/08/2003

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.287 OF 1995 and CRIMINAL APPEAL NO.343 OF 1995

1. Gopal
2. Yuvaraj
3. Kesavalu
4. M.G.Venkatapathy .. Appellants in
CA 287 of 1995

Seshaiah .. Appellant in
CA 343 of 1995
-Vs-

State Rep. by the
Inspector of Police
K-2 Ayanavaram Police Station .. Respondents in
both appeals

These criminal appeals are preferred under Sec.374 of The Code of Criminal Procedure against the judgment of the II Additional Sessions Judge, Madras made in S.C.No.41/94 and dated 7.3.95.

!For A-1 and A-2 : Mr.V.Gopinath,
in CA 287/95 Senior Counsel,
for M/s.A.Aruna Ganesan for A1
and for Mr.K.Selvarangan
and L.Mahendran for A2

For A-3 and A-5 : Mr.B.Sriramalu,
in CA 287/95 for M/s.K.Annadurai and
P.Raja

For appellant in : Mr.T.Sudanthiram
CA 343/95

^For Respondent : Mr.V.M.R.Rajendran, Addl.P.P.

:COMMON JUDGMENT

(Judgment of the Court was delivered by N.DHINAKAR, J.)
C.A.No.287 of 1995 is by A-1 to A-3 and A-5, and C.A.No.343 of 1995 is

by A-4 both in S.C.No.41 of 1994 on the file of the II Additional Sessions Judge, Madras.

2. In the judgment, the appellants in C.A.287/95 will be referred to as A-1 to A-3 and A-5, and the appellant in C.A.343/95 will be referred to as A-4 in the same order as they were arrayed before the learned Sessions Judge for the sake of convenience.

3. As the two appeals arise out of a single Sessions Case, we pass the following common judgment in the above two appeals.

4. The allegation against A-1 to A-5 is that at 7.30 p.m. on 15.4.19 92, they conspired in the house of A-5 to cause the death of Dellibabu, and in pursuance of the conspiracy hatched by them, A-1 and A-2 cut the deceased at about 5.15 a.m. on 16.4.92 at Parasurama Eswara West Maada Street with aruvals and patta knives; and that A-3 to A-5 instigated the attack.

5. The learned Sessions Judge found A-1 to A-5 guilty under Sec.120-B of I.P.C., but did not award any separate sentence. He directed A-1 and A-2 to suffer imprisonment for life for a charge under Sec.302 of I.P.C. namely charge No.2, and A-3 to Are similarly sentenced for a charge under Sec.302 read with 109 of I.P.C. namely Charge No.3. The appeals challenge the conviction and sentence of the appellants/A-1 to A-5.

6. The case of the prosecution is as follows:

P.W.1 is the younger brother of the deceased Dellibabu. P.W.2 is the father of the deceased, and P.W.3 is the friend of the deceased. P.W.5 is the brother-in-law of P.W.2. The deceased and P.Ws.1 and 2 were residing at Door No.60, Vellala Street, Ayanavaram, Chennai. The deceased was running a Milk Stall at Konnur High Road, and P.W.1 was helping him in his business. On 16.4.1992, the deceased left for his shop taking the cycle along with him. A few minutes thereafter, P.W.1 followed him by walk. He saw the deceased taking a turn towards Vellala Street and entering Parasurama Eswara West Maada Street, and the distance between P.W.1 and the deceased w as 60 feet. While P.W.1 was looking at the deceased, he saw A-1 and A-2 pushing the deceased from the cycle on which the deceased was riding, and they attempted to cut him. The deceased on seeing A-1 and A-2 dropped the cycle at that place and ran away from there, chased by A-1 and A-2. P.W.1 also ran behind them, all the time shouting "don't cut my brother, don' t cut my brother". There were electric lights burning, and it was 5.1 5 a.m. When the deceased reached Door No.15 in the same Street, A-1 and A-2 cut him indiscriminately. The accused 1 to 3 also threatened P.W.1 telling him that he will also meet with the same fate. Thereafter, they went away from the place. P.W.1 went near his brother and attempted to give some water. Thereafter, an auto was brought, in which the injured Dellibabu was placed and taken to Kilpauk Medical College Hospital, where he was produced by P.W.1 before P.W.10, the Casualty Medical Officer at 6.20 a.m. The Doctor admitted Dellibabu in Male Surgical Ward. P.W.15 Doctor attached to the Hospital commenced his treatment, but Dellibabu died at 6.35 a.m. Ex.P8 is the copy of the accident register issued by the Medical Officer, and an intimation was also sent to the police authorities. P.W.1 on coming to know about the death of his brother, left the hospital, proceeded to Ayanavaram Police Station and handed over a written complaint Ex.P1 to P.W.17, the Sub Inspector.

7. At 8.00 a.m. On the basis of P1, P.W.17 registered a case in Crime No.992/92 against the accused under Sec.302 of I.P.C. Ex.P15 is the printed First Information Report. In the meantime, P.W.19, the Inspector of

Police, who was on his rounds, was informed about the occurrence, and therefore, he proceeded to the scene of occurrence and reached it at 9.00 a.m. He had the scene caused to be photographed through a photographer P.W.14. He prepared an observation mahazar Ex.P2 and drew a rough sketch Ex.P26. Bloodstained earth M.O.16 and sample earth M.O.17 were seized under a mahazar Ex.P3 attested by witnesses. He also seized a cycle M.O.4, a plastic vessel M.O.5, a plastic basket M.O.6, a plastic ball M.O.7 as well as a pair of slippers M.O.8 (series) under a mahazar Ex.P4. P.W.19 left the scene of occurrence and reached Kilpauk Medical College Hospital, where he conducted inquest on the dead body of Dellibabu in the presence of panchayatars. Ex.P27 is the inquest report, and after the inquest was over, he gave a requisition Ex.P10 to the Doctor for conducting autopsy.

8. On receipt of the requisition, P.W.12 Assistant Professor of Forensic Medicine, Kilpauk Medical College, conducted autopsy on the dead body of Dellibabu, and he found the following injuries.

Injuries:-

(1) Oblique incised wound 10 x 1 cm x Skin Deep over the outer aspect of left shoulder.

(2) Oblique incised wound 8 x 1 cm. x Skin Deep over the outer aspect of left upper arm, 3 cm. below the Injury No.1.

(3) Abrasion 4 x 1 cm. over the back of middle of left fore-arm.

(4) The terminal phalanx of the finger of left hand is severed and attached with the middle phalanx with a tar of skin.

(5) Oblique incised wound 7 x 2.5 cm. x Muscle Deep over the right shoulder, 5 cm. medial to right acromion, with tailing at its posterior end to a length of 4 cm.

(6) Incised wound 2 x 0.5 cm. x Skin Deep over the palmar aspect of terminal phalanx of index finger of right hand.

(7) Incised wound 1 x 0.5 cm. x Skin Deep over the palmar aspect of middle phalanx of ring finger of right hand.

(8) Incised wound 5 x 0.5 cm. x Muscle Deep over the inner aspect of right palm.

(9) Abrasion 2.5 x 2 cm. on front of right knee.

(10) Oblique incised wound 5 x 1 cm. x Bone Deep on front of middle of left leg with an oblique cut over the middle side of Tibia to a length of 2 cm. and to a depth of 0.5 cm.

(11) Oblique incised wound 4.5 x 0.5 cm. x Skin Deep on front of outer aspect of right side of chest, 14 Cm. away from the midline over the 6th. and 7th. Inter-costal space.

(12) Abrasion 5 x 1 cm. over the left scapular region.

(13) Incised wound 4 x 1 cm. x Bone Deep over the left side of forehead, 0.5 cm. away from the midline and 5 cm. above the left eye-brow.

(14) Oblique chop wound 10 x 2 cm. over the left side of head extending from left parietal region to left occipital prominence.

ON DISSECTION, oblique cut over the posterior part of left parietal bone to a length of 5 cm. and over the occipital bone on left side to a length of 2 cm. communicating with cranial cavity.

ON FURTHER DISSECTION, a cut over the dura matter to a length of 5 cm. and a cut over the underlying parietal lobe of Brain to an extent of 4 x 0.5 x 2 Cm. away from the midline. The depth of the wound is 5 cm.

(15) Oblique lacerated wound 7.5 x 1 Cm. x Bone Deep over the left parietal

region of the scalp, 1 Cm. away from the midline and 7 Cm. above the left ear.
(16) Vertical laceration 6 x 1 cm. x Bone Deep over the Mid parietal region of the scalp.
(17) Oblique laceration 7 x 1 Cm. x Bone Deep over the right parietal region of the scalp.
ON DISSECTION, over the Injury No.15, 16 and 17.
Contusion of scalp tissues 20 x 12 x 0.5 Cm. involving the right temporal, right and left parietal and occipital region on right side.
Depressed communicated fracture to an extent of 5 x 2 Cm. involving the posterior parts of both parietal bones, from its anterior end a fissured fracture extending to left parietal bone to a length of 6 Cm. fissured fracture extending to right parietal bone to a length of 7 Cm. and from the posterior end a vertical fissured fracture extending to the occipital bone on right side close to the midline to a length of 5 Cm.
Contusion 3 x 2 x 1 Cm. over the left parietal lobe close to the midline and 5 x 3 x 1 Cm. over the right parietal lobe of Brain.
The Doctor issued Ex.P11 the postmortem certificate with his opinion that the deceased died on account of his head injuries.

9. P.W.19 continuing with his investigation, questioned the witnesses and recorded their statements. M.Os.18 and 19 clothes which were on the dead body, and produced by the Constable, who was present at the time of postmortem, were seized under a mahazar Ex.P9. He questioned P.Ws.1 to 3 and recorded their statements. The material objects were forwarded to the Court with a requisition to send them for analysis. The further investigation was taken up by his successor P.W.20 on 20.4.1992. P.W.20 on taking up investigation from P.W.19, verified the investigation conducted by his predecessor, and on 22.4.92, he came to know that A-1 and A-2 have surrendered before the Metropolitan Magistrate, Saidapet. He filed a petition supported by an affidavit on 23.4.92 to take them into police custody, and on the orders of the Magistrate, they were taken to police custody and brought to the Police Station. They were questioned at the Police Station namely A-1 at 8.00 a.m. and A-2 at 9.45 a.m., on 26.4.92, and A-1 and A-2 gave statements. The admissible portion of the statement of A-1 is Ex.P5. A-1 and A-2 in pursuance of the statements given by them, took the police party to Parasuramaiyer Koil Street and from a vacant plot produced M.Os.1 and 2 which were hidden under a bush. They were seized under a mahazar Ex.P6.
10. The Investigating Officer thereafter, seized M.O.3 an auto bearing Registration No.TSR 2671 and also M.Os.9 to 12 clothes which were kept in the auto, under a mahazar Ex.P7. He, thereafter, altered the crime to one under Ss 147, 148, 302 and 120 B read with 109 of I.P. C. On 26.4.92, he examined P.Ws.4, 5 and 7 and recorded their statements. On 27.4.96, he questioned some more witnesses and recorded their statements. A-1 and A-2 thereafter, were sent to Court for remand. On 30.4.92, he arrested A-3 to A-5 near a park at Anna Tower. On 7 .5.92, P.W.14, the photographer was questioned, and his statement was recorded. On 12.5.92, the Investigating Officer made a requisition to the Magistrate to record the statements of P.Ws.3 to 5 under Sec.1 64 of the Code of Criminal Procedure. After the completion of investigation, the final report was filed against the accused on 25.8.92.

11. The accused were questioned under Sec.313 of the Code of Criminal Procedure on the incriminating circumstances appearing against them. They denied all the incriminating circumstances. They did not examine any witnesses.

12. The cause of death of Dellhibabu is not in dispute, and the same stands established through the evidence of Doctor P.W.12, who conducted autopsy. The Doctor in his evidence stated that on conducting autopsy, he found the injuries, which he noted in the postmortem certificate Ex.P11, and also stated that the injuries 14 to 17 are fatal in nature, and the injured after suffering those injuries, could have lived only for about an hour; and that all these injuries could have been caused by sharp-edged weapons. On the evidence of the Doctor, we find that Dellibabu died on account of homicidal violence. This fact was not disputed before the trial Court. Nor is it disputed before this Court.

13. P.Ws.1 to 3 were examined by the trial Court to establish that A-1 and A-2 inflicted the fatal injuries on the deceased at the instigation of A-3 to A-5. P.W.5 was examined to show that the occurrence was on account of a conspiracy hatched in the house of A-5 on the previous day. The trial Court disbelieved the evidence of P.Ws.2 and 3. On going through the reasons given by the trial Judge and on perusal of the evidence of the said two witnesses, we find no reason to take a different view from the one taken by him. We are also of the view that the evidence of P.Ws.2 and 3 are too artificial in nature to be believed. In fact, P.W.2 though claims to be the father of the deceased, has stated that he went away after the incident to attend a marriage and was examined by the Police Officer only after 10 days. Similarly, P.W.3 though claims himself to be the friend of the deceased, did not even care to join the grieving family of the deceased, and was not even examined by the Investigating Officer during the inquest. His name is also not mentioned in the complaint Ex.P1. According to the prosecution, he was a chance witness, and he went to the house of the deceased on the previous day to go to a theatre along with the deceased. On going through the evidence of the two witnesses namely P.Ws.2 and 3, we are not satisfied with their evidence, and we are of the view that their evidence cannot be taken into consideration to hold the accused guilty. We accordingly reject their evidence.

14. We will now take up the evidence of P.W.5 to find out whether there was conspiracy on the previous night. On going through the evidence of P.W.5, we find that it bristles with several artificial features. In his evidence, he has stated that at 7.00 p.m. on 15.4.1992, he was proceeding to Kunjitham Gurusamy Street to meet his friend, and while he was on the road, he saw A-1 to A-5 in the house of A-5 and talking among themselves; and that he heard A-5 asking A-1 to A-3 to cut the deceased and telling them that A-4 will help them in carrying out the task. P.W.5 further stated that thereafter, he went away to the house of his friend, and on the next day, he came to know about the murder of Dellibabu and went to the house of the deceased to condole the death. He also admitted that he did not inform any of the family members of Dellibabu as to what he heard on the previous night. The Investigating Officer stated in his evidence that he examined him on 26.4.92. But, his statement was received by the Court only on 21.5.92. The conduct of P.W.5 in not informing the family members of the deceased about the conspiracy being hatched in the house of A-5 to murder the said Dellibabu, and the fact that his statement was received by the Magistrate only on 21.5.92 create a doubt

whether P.W.5 was really present near the house of A-5 and heard the conversation among the accused. It is also difficult to accept the prosecution version that A-1 to A-5 who were hatching the conspiracy to murder a person, were so loud in their voice, so that others could hear about the conspiracy. It is a known fact that conspiracy is always hatched in secrecy, and it is, therefore, difficult to believe that A-1 to A-5 were discussing their plans to murder the said Dellibabu in a highpitched voice, so that their plans could be known to persons passing in the road. We do not attach any importance to the evidence of P.W.5.

15. We will now take up the evidence of P.W.1, the only eyewitness, whose evidence was believed and accepted by the trial Court to convict the accused under Sec.302 of I.P.C. On going through the entire recorded evidence, we, even at the outset, say that we are unable to accept his evidence also. The case of the prosecution is that the occurrence took place at about 5.15 a.m. on 16.4.92. The evidence of P.W.1 is to the effect that his elder brother left the house for his shop, where he was selling milk; and that he followed him, a few moments thereafter. It is his further evidence that when he saw his brother entering Parasurama Eswara West Maada Street, he saw A-1 and A-2 pushing the deceased from his cycle and attempting to cut him. According to him, on seeing A-1 and A-2, the deceased ran from the place chased by A-1 and A-2, and he also ran behind them. P.W.1 also stated that when the deceased reached Door No.15 in the same Street, he fell down, and thereafter, A-1 and A-2 inflicted indiscriminate cuts. It is his further evidence that the deceased was placed in an auto and was taken to the Kilpauk Medical College Hospital and produced before the Doctor P.W.10 at 6.20 a.m.

16. The Doctor P.W.10 has in his evidence stated that the injured Dellibabu was produced before him by Sukumar, the younger brother of the deceased. The Doctor in his cross examination has admitted that the Doctors who admit a victim involved in a medico-legal case will always ask either the victim if he is conscious or the person who brings him to the hospital, as to the cause of injuries; and that thereafter, the answer given by the victim or by the person who brought him, will be entered in the register kept at the hospital. He has also stated that if names are given, it will be written in the register as " attacked by known persons", and that they will note down the number of persons who attacked the victim. He has admitted that in Ex.P8, the accident register, he did not note such details. He further added that as is the custom with the medical authorities in medico-legal cases, he asked the brother of the deceased Dellibabu as to how Dellibabu suffered injuries, and P.W.1 did not give any details about the attack and also the number of persons who attacked the victim. He has also further added that he has sent an intimation to the Outpost Police Station. According to him, the intimation sent to the Outpost Police Station is forwarded by the Police Officers at the Outpost Police Station to the concerned Police Station for its registration and subsequent investigation. The evidence of P.W.10, therefore, shows that when P.W.1 took his brother to the hospital and admitted him, he had no clue as to who attacked his brother and the number of persons who attacked him. If P.W.1 was really an eyewitness and saw the occurrence, he would have given details about the incident including the names of the accused and the number of persons who attacked his brother, though the evidence of P.W.1 is that on coming to know that his brother has died, he left for the Police Station and gave a complaint at 8.00 a.m. to P.W.17, the Sub Inspector, Ayanavaram Police

Station giving names of the assailants.
17. We will now find out whether the complaint Ex.P1 could have come into existence at 8.00 a.m. or whether there was an information regarding the occurrence even earlier to 8.00 a.m. At this stage, we cannot, but recollect the evidence of P.W.10 who has stated that the Medical Officer will always send a report to the Outpost Police Station, if the victim is involved in a medico-legal case; that the Police Officer at the Outpost Police Station will forward the said intimation to the concerned Police Station; and that in this case also, he sent an intimation to the Outpost Police Station. If an intimation was sent to the Outpost Police Station, then it must have been at around 6.45 a.m. or 7.00 a.m., since Dellibabu breathed his last at about 6.35 a.m. on 16.4.1992. In this background, we will now consider the evidence of P.W.16, the Police Constable attached to Ayanavaram Police Station. It was he, who was present at the time of postmortem. In his cross examination, he has stated that he joined duty at Ayanavaram Police Station at 7.00 a.m. and was there till 1.30 p.m. He has further admitted that he did not know as to who gave the complaint and at what time the said complaint was given regarding the incident. He went on to admit that the Police Officers at the Police Station knew about the incident even by 7.00 a.m., and there was hectic activity at the Police Station even by that time. He has also admitted that the Investigating Officer P.W.19 was in the Police Station from 7.00 a. m. till 1.30 p.m. on that day, though P.W.19 came out with a contradictory version by stating that he was on bandobust duty and came to know about the incident; and that thereafter, he proceeded to the scene of occurrence to commence the investigation. The evidence of the Police Constable P.W.16 attached to Ayanavaram Police Station, therefore, destroys the case of the prosecution that the complaint Ex.P1 was given by P.W.1 at 8.00 a.m. to P.W.17, the Sub Inspector, as the Police Officers were aware of the incident even by 7.00 a.m., and there was hectic activity at the Police Station, and that the Investigating Officer was also present at the Police Station even by 7.00 a.m. This means that the police must have had information from some other source even before 7.00 a.m., and therefore, the present case that P.W.1 gave the complaint at 8.00 a.m. and thereafter, the crime came to be registered cannot be true.
18. At this juncture, an useful reference can be made to the evidence of P.W.14, the photographer. P.W.14 even in chief stated that he went to the scene of occurrence and took photographs at 8.30 a.m. If the complaint was given at 8.00 a.m. and P.W.19, the Investigating Officer, came to know about the incident, while he was on his rounds, at 8.50 a.m. and the Officer reached the scene of occurrence at 9.00 a.m., then P.W.14 could not have been at the scene of occurrence to take photographs at 8.30 a.m., as he could not have gone there before any requisition was issued to him to go over to the scene of occurrence to take the photographs. The above evidence of P.W.14 also indicates that the information about the murder was known to the police authorities much earlier to 8.00 a.m. P.W.14 added more worries to the prosecution by giving an answer in the cross examination that when he went to the scene of occurrence, he saw the Police Officers namely P. W.17, the Sub Inspector and P.W.19, the Inspector, and the photographs were taken within an hour of his reaching the scene of occurrence, which shows that when P.W.14 went to the scene of occurrence at 8.30 a.m., the Police Officers including the Sub Inspector P.W.17 and the Inspector P.W.19 were at the scene, and the

photographs were taken within an hour. This evidence of P.W.14 also destroys the prosecution version that Ex.P1 was given by P.W.1 at 8.00 a.m.

19. It is to be remembered at this stage that according to the Investigating Officer P.W.19, the inquest was conducted between 11.15 a.m. and 2.15 p.m. at Kilpauk Medical College Hospital. It is normally expected of a Police Officer to examine the eyewitnesses at the time of inquest, if they are available; but, in this case, the Officer did not examine any of the eyewitnesses at the time of inquest, though P.Ws.1 to 3 have stated that they were in the hospital from the morning till 4.00 p.m. on that day. If that be the case, we are unable to comprehend as to why P.W.19 did not think it necessary to examine the three alleged eyewitnesses, when he conducted the inquest. There is no explanation on the side of the prosecution for the nonexamination of these witnesses at the time of inquest.

20. In this background, we will now consider the evidence of the Postmortem Doctor P.W.12, and his findings noted in the postmortem certificate Ex.P11. A perusal of the postmortem certificate Ex.P11 shows that the Doctor found 100 grams of undigested rice in the stomach of the deceased. When he was in the box, he was cross examined on this aspect. He has stated that the deceased m ust have consumed his last meals about an hour and half prior to his death. This means that the deceased would have taken his meals at about 4.30 or 5.00 a.m., which is unbelievable since the Doctor found rice particles, and no person in this part of the country takes rice at that odd hour. The presence of undigested rice in the stomach of the deceased indicates that the deceased must have been attacked much earlier, and later, on coming to know about the death of his brother, P.W.1 would have been summoned, and the complaint Ex.P1 would have been prepared.

21. Though the prosecution relied upon the evidence of P.Ws.4 and 7 to show that after the incident, A-1 to A-3 travelled in the auto driven by P.W.4, and the same was seen by P.W.7, we are unable to place any reliance upon their evidence, since admittedly, their statements were received by the Magistrate only on 21.5.92, though they were claimed to have been examined by the Officer on 26.4.92. It is also difficult to accept the evidence of P.W.4 that when the accused 1 to 3 came near his auto, they proclaimed in a loud voice that they have murdered Dellibabu on the directions of A-5. There was no need for any of the accused to have mentioned about their deeds and much less about the alleged part played by A-5 to P.W.4, an auto driver. We are also unable to place any reliance on the evidence of P.W.7, since, in our view, his evidence is highly artificial, and the totality of the evidence shows that the prosecution has not succeeded in establishing the case against the accused beyond all reasonable doubts.

22. In the result, these two criminal appeals are allowed, and the appellants/A-1 to A-5 are acquitted of the charges levelled against them. It is reported that the appellants are on bail. Their bail bonds shall stand cancelled.

Index: Yes
Internet: Yes

To:

1) The II Additional Sessions Judge, Madras.
2) The II Additional Sessions Judge, Madras,
Thro' The Principal Sessions Judge, Madras.
3) The V Metropolitan Magistrate, Egmore, Madras.
4) The V Metropolitan Magistrate, Egmore, Madras,
Thro' The Chief Metropolitan Magistrate, Egmore, Madras.
5) The District Collector, Madras.
6) The D.G.P., Chennai.
7) The Public Prosecutor, High Court, Madras.
8) The Superintendent, Central Prison, Vellore.
9) The Inspector of Police, K2 Ayyanavaram Police Station,
Madras.

nsv/